

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MATT P. JACOBSEN,

Plaintiff,

v.

CLEAR RECON CORP, HSBC BANK
USA N.A., PNH MORTGAGE
CORPORATION,

Defendants.

Case No. 3:15-cv-00504-MMD-VPC

ORDER

Plaintiff initiated this second mortgage action to challenge a foreclosure sale after the Court dismissed a similar action. Plaintiff filed a motion for temporary restraining order upon the filing of the Complaint on October 5, 2105 ("Motion"). (Dkt. no. 4.) Before the response deadline, which the Court extended pursuant to the parties' stipulation, Plaintiff filed a second motion for temporary restraining order. (Dkt. no. 27.) The second motion appears to be submitted solely based on the change in the scheduled foreclosure sale date. (Dkt. no. 27.)

The relevant background facts are taken primarily from Plaintiff's Complaint and motion for temporary restraining order ("Motion"). On June 23 2005, Plaintiff acquired property located at 1311 La Loma Drive in Carson City, Nevada ("the Property"). (Dkt. no. 2 at 4.) Plaintiff obtained a loan ("Loan"), which was secured by Deed of Trust ("DOT") on the Property in favor of HSBC Mortgage Corporation ("HSBC Mortgage"). (*Id.*) On August 13, 2012, HSBC Bank USA, N.A. ("HSBC") requested the recording of an assignment purporting to assign the DOT from HSBC Mortgage to HSBC. (*Id.* at 6, 24-25.) However, this assignment was invalid because Fannie Mae owned the Loan. (*Id.* at 1, 6.) HSBC improperly initiated foreclosure proceedings. (*Id.*) Plaintiff was

1 erroneously informed that the foreclosure sale would be cancelled if he completed a
2 loan modification package, which he did with PHH Mortgage Corporation ("PHH") and
3 HSBC. (*Id.* at 1, 8; dkt. no. 4-2 at 2-3.) HSBC substituted Clear Recon Corp. ("CRC") as
4 a trustee under the DOT but CRC is not the proper trustee. (Dkt. no. 1 at 1, 9.) On June
5 1, 2015, CRC recorded a Notice of Trustee's Sale. (Dkt. no. 2 at 18.)

6 Plaintiff asserts six claims based upon Defendants' handling of the Loan and the
7 foreclosure proceedings, including claims for quiet title and for violations of the Real
8 Estate Settlement Procedures Act ("RESPA") and Fair Debt Collection Practices Act
9 ("FDCPA"). (*Id.* at 9-14.) Plaintiff moved to enjoin the foreclosure sale, which has been
10 continued from October 8, 2015 to January 7, 2016. (Dkt. nos. 4, 27.)

11 Federal Rule of Civil Procedure 65 allows a court to issue a temporary restraining
12 order and preliminary injunction. "An injunction is a matter of equitable discretion" and
13 is "an extraordinary remedy that may only be awarded upon a clear showing that the
14 plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,
15 22, 32 (2008). To obtain injunctive relief, such as a preliminary injunction or a temporary
16 restraining order, a plaintiff must demonstrate (1) that he is likely to succeed on the
17 merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief,
18 (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public
19 interest. *Id.* at 20; *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). The
20 Court finds that Plaintiff cannot establish that he is likely to success on the merits of his
21 claims and denies Plaintiff's Motion.

22 Plaintiff alleges that this action is not the same as his previous action, case no.
23 3:12-cv-00486-MMD-WGC ("First Case"). (Dkt. no. 1 at 10.) However, the allegations in
24 the current Complaint appear similar to the complaint filed in the First Case. In the First
25 Case, Plaintiff alleged that HSBC and Quality Loan Service Corporation, as the lender
26 and purported trustee, improperly initiated foreclosure proceedings on his property,
27 which is the same property identified in this case. (First Case, dkt. no. 1-1.) He alleged
28 similar claims for quiet title and for violations of RESPA and FDCPA, among other

1 claims.¹ (*Id.*) Plaintiff similarly moved to enjoin a scheduled foreclosure sale. (First
 2 Case, dkt. no. 24.) The Court denied his motion and dismissed all but his RESPA claim
 3 with prejudice. (First Case, dkt. no. 27.) Plaintiff then filed an emergency motion for
 4 temporary restraining order, which the Court denied. (First Case, dkt. nos. 28, 30.) Not
 5 satisfied, Plaintiff then moved for reconsideration of the Court's dismissal order, which
 6 the Court denied. (First Case, dkt. no. 33, 36.) In doing so, the Court further directed
 7 that no filings would be accepted without leave of Court. (First Case, dkt. no. 36.)

8 Plaintiff cannot demonstrate that he will likely succeed on the merits because his
 9 claims are barred by claim preclusion. Claim preclusion bars "the parties or their privies
 10 from "relitigating issues that were or could have been raised in an action resulting in a
 11 final judgment on the merits." *Herb Reed Enter., LLC v Florida Entm't Mgmt, Inc.*, 736
 12 F.3d 1239, 1244 (9th Cir. 2013) (quoting *Federated Dep't Stores, Inc. v. Moitie*, 452
 13 U.S. 394, 398 (2001)). Because the Court dismissed with prejudice all but the RESPA
 14 claims on the merits in the First Case, Plaintiff cannot relitigate these claims in this
 15 case. Moreover, because of the similarity between the allegations and claims in the
 16 First Case and this case, the Court finds that Plaintiff cannot satisfy the likelihood of
 17 success on the merits factor under *Winter* for the same reasons that led to dismissal of
 18 the First Case and the Court's denial of Plaintiff's motion for reconsideration. (First
 19 Case, dkt. nos. 27, 36.)

20 It is therefore ordered that Plaintiff's motions for temporary restraining order (dkt.
 21 nos. 4, 27) are denied.

22 DATED THIS 6th day of January 2016.



MIRANDA M. DU
 UNITED STATES DISTRICT JUDGE

25 _____
 26 ¹The RESPA claim appears to be similar to the RESPA claim in the First Case.
 27 Here, Plaintiff alleges that HSBC failed to respond to a "Qualified Written Request" and
 28 PHH similarly failed to respond to a subsequent request after it became the "sub-
 servicer on May 1, 2013." (Dkt. no. 2 at 11-12.) In the First Case, he alleges that HSBC
 failed to respond to a written request he sent to HSBC Mortgage Corporation on
 January 15, 2011. (First Case, dkt. no. 1-1.)